determine the exact result desired must leave the correctness of his estimate dependent, in the last analysis, on chance, seems too clear for argument.

MALICIOUS PROSECUTION — PROBABLE CAUSE — BONA FIDE MISTAKE OF LAW. — A tenant tore down the "To Rent" sign which her landlord's agent had hung in her window. The agent, an attorney, unsuccessfully prosecuted her under a statute which made criminal the severance of fruits, crops, etc., "or anything," from the freehold. *Held*, that the agent had probable cause for the prosecution. *Whipple* v. *Gorsuch*, 101 S. W. 735 (Ark.).

The plaintiff, through the false representation that he was a Roman Catholic priest collecting funds for the building of a Roman Catholic church, obtained money wherewith he built an Old Catholic church. The defendant unsuccessfully prosecuted him for obtaining money by false pretenses. *Held*, that the defendant had no probable cause for the prosecution. *Urban* v. *Tyszka*, 64 Leg. Int. 411 (Pa., Washington Co. C. P., April 23, 1907).

The question of probable cause depends largely upon the particular facts of each action for malicious prosecution; it is dangerous to generalize as to what a man of reasonable prudence and caution would or would not do. Some dicta suggest that he would never make a mistake of law. See *Hazzard* v. *Flury*, 120 N. Y. 223; *Hall* v. *Hawkins*, 24 Tenn. 357. In most of such cases the defendant had prosecuted the plaintiff for larceny of goods taken under a claim of right, or the defendant's belief in the plaintiff's guilt arose from some similar gross mistake of law. Where, however, the defendant misapprehended a doubtful point of law, he may still be considered to have acted with reasonable prudence and hence with probable cause. *Phillips* v. *Naylor*, 4 H. & N. 565. This view seems correct logically, and as a matter of public policy. Both the present decisions appear doubtful in the light of the facts, but the Arkansas holding illustrates the more commendable tendency. It cannot be said that he who institutes a prosecution is always bound at his peril, if a layman, to consult an attorney, if a lawyer, to know the law.

MUNICIPAL CORPORATIONS — MUNICIPAL DEBTS AND CONTRACTS — MORTGAGE OF STREET RAILWAYS PAYABLE FROM THEIR INCOME CONSTITUTING DEBT. — The Illinois constitution limits city indebtedness. In purchasing street railways Chicago issued $75,000,000 of certificates payable solely from the income of the railways, and secured by a mortgage of the railway property, the purchaser at foreclosure being given the right to operate the railways for twenty years. *Held*, that this issue of certificates constitutes a debt within the constitutional provision. *Lobdell* v. *Chicago*, 227 Ill. 218.

The policy underlying limitations on indebtedness is that future taxpayers shall not be unduly burdened. See 16 HARV. L. REV. 442. A loan secured by a purchase-money mortgage does not constitute a debt to which the limitation applies. *Winston* v. *Spokane*, 12 Wash. 524. But it has been held that hypothecation of stock creates a debt, although the pledgee has no recourse against the city. *Mayor* v. *Gill*, 31 Md. 375. That case differs from the present, for it appears that the city there contemplated "returning" the money from its general funds. Further, a loan, to be repaid solely from the income of existing waterworks, and secured by a mortgage on the waterworks, has been held a debt. *City of Joliet* v. *Alexander*, 194 Ill. 457. This decision, however, has been questioned. See 34 Nat. Corp. Rep. 325. And the present case goes much further, since the threatened increase, if any, in taxation seems very remote. The city has executed a purchase-money mortgage which admittedly creates no debt; in addition it has granted a franchise contingently which it had the right to grant absolutely and gratuitously. *Roby* v. *Chicago*, 215 Ill. 604. The transaction, therefore, seems to throw no additional burden on the taxpayers, and consequently should not be considered a debt prohibited by the constitution.

MUNICIPAL CORPORATIONS — TERRITORIAL LIMITS AND SUBDIVISIONS — GRANTING MUNICIPALITY POWER OUTSIDE ITS CORPORATE LIMITS. — The state legislature granted to the city of Memphis general police power for the purposes of sanitation and health ten miles beyond the city limits, and complete

governmental and police power for all purposes for two miles beyond. *Held*, that both provisions violate the clause of the state constitution which prohibits deprivation of liberty without due process of law. *Malone* v. *Williams*, 103 S. W. 798 (Tenn.).

It is clear that two distinct municipal corporations cannot exercise the same power at the same time within the same territories. *Taylor* v. *Fort Wayne*, 47 Ind. 274, 281. But the state as sovereign may within proper limits delegate its power to a municipality, and when such a delegation is in conflict with a former grant the latter is impliedly revoked. See *Patterson* v. *Society*, 4 Zab. (N. J.) 385, 399. Such extension of jurisdiction has been most frequent for the purpose of regulating liquor traffic, and has been upheld for such purpose to the extent of four miles. *Jordan* v. *Evansville*, 163 Ind. 512. The power thus delegated must, however, have reference to the welfare of such municipality. *Falmouth* v. *Watson*, 5 Bush (Ky.) 660. Moreover, the delegation to a municipality of any unreasonable or oppressive power over those outside its limits, who have no voice in the corporate affairs, must be regarded with apprehension as a deprivation of liberty without due process of law. It is clear that while such extension of power might be proper in the case of a large city surrounded by sparsely settled country, it would be unjustifiable where two populous cities were contiguous. And the decision in the present case declaring the proposed grant unreasonable seems sound.

PATENTS — INFRINGEMENT — CONTRIBUTORY INFRINGEMENT. — The patentee of a talking-machine had no patent on the sound-producing records used with the machine. The defendant manufactured and sold records solely for the use of purchasers of the talking-machines. *Held*, that the sale of the records may be enjoined. *Leeds & Catlin Co.* v. *Victor Talking Machine Co.*, 154 Fed. 58 (C. C. A., Second Circ.).

The doctrine of contributory infringement usually prohibits the sale of unpatented parts of a patented combination, or unpatented articles which are of value only when used in combination with the patented article. *Thomson-Houston Electric Co.* v. *Kelsey, etc., Co.*, 75 Fed. 1005. The result, as pointed out by the dissenting opinion, is the creation of a monopoly of an unpatented article. But purchasers of patented articles have the right of repair and supply, and it is therefore held that the sale to them of short-lived incidental articles cannot be enjoined. *Morgan Envelope Co.* v. *Albany, etc., Co.*, 152 U. S. 425. In the present case the court bases its decision on the permanent nature of the records. The better test seems to be that of the practical comparative permanency of the patented and the unpatented article. See *Morgan Envelope Co.* v. *Albany, etc., Co.*, *supra*, 433. Records of a talking-machine do not wear out quickly, and are therefore permanent in that sense, but not in another, since in practice they are periodically renewed. The case seems doubtful, therefore, even granting the soundness of enlarging the monopoly of the patent in the case of truly permanent auxiliary articles. *Cf. Wilson* v. *Simpson*, 9 How. (U. S.) 109.

POST-OFFICE — POWER TO WITHHOLD MAIL PENDING INVESTIGATION OF FRAUD CHARGES. — The Postmaster-General issued an order withholding the complainant's mail for six weeks, pending the investigation of a charge of fraud. *Held*, that he is exceeding his power. *Donnell Mfg. Co.* v. *Wyman*, 4 The Law 807 (Circ. Ct., E. D. Mo., Sept. 2, 1907).

This case seems the first to define the powers of the Postmaster-General in this matter. He is authorized on evidence of the addressee's fraud, "satisfactory to him," to order mail returned. U. S. COMP. STAT. 1901, § 3929. But it is questionable if he may withhold mail even for a limited time, before he is satisfied of fraud. It may be urged, on the one hand, that the statutory grant of power includes authority to do whatever is necessary to make effectual the object of the grant. See *Mayor* v. *Sands*, 105 N. Y. 210, 218. And, as the object is to prevent fraudulent use of the mails, not to imply the power would to a degree defeat the object of the statute, for the addressee, pending an investigation, would reap the benefit of his fraud. On the other hand, it may be argued that whenever a statute gives a right and names a remedy, it impliedly